IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:11-CV-662-D

POLYZEN, INC.,)	
Plaintiff,)	
v.)	ORDER
RADIADYNE, LLC,)	
Defendant.)	

On May 23, 2014, Polyzen, Inc. ("Polyzen"), filed a motion for partial summary judgment of "no invalidity" of United States Patent No. 7,976,497 ("the '497 patent") [D.E. 107]. On June 13, 2014, RadiaDyne, LLC ("RadiaDyne"), filed a notice of non-opposition [D.E. 127] to Polyzen's motion. As explained below, the court denies Polyzen's motion for summary judgment.

For an issue to be fit for judicial decision, the action in controversy must be final and not dependent on future uncertainties. See Doe v. Va. Dep't of State Police, 713 F.3d 745, 758 (4th Cir. 2013); Miller v. Brown, 462 F.3d 312, 319 (4th Cir. 2006). "Where an injury is contingent upon a decision to be made by a third party that has not yet acted, it is not ripe as the subject of decision in a federal court." Doe, 713 F.3d at 758. Furthermore, "[i]n determining ripeness, [the court] balance[s] the fitness of the issues for judicial decision with the hardship to the parties of withholding court consideration." Id. (quotation omitted).

The issue of the '497 patent's validity is not ripe. Both parties agree that RadiaDyne has not raised invalidity as a defense. See Pl.'s Mot. Partial Summ. J. [D.E. 107] 4; Def.'s Notice Non-Opp'n [D.E. 127] 1. RadiaDyne does not assert that the patent is invalid. Def.'s Notice Non-Opp'n

2. Any injury to Polyzen concerning the subject of this motion is contingent on a third party

claiming that the patent is invalid, which has not happened. The issue of validity has not been fully

briefed and there is no apparent hardship to Polyzen resulting from the court's decision to deny

without prejudice its motion.

Accordingly, the court DENIES without prejudice Polyzen's motion for partial summary

judgment of no invalidity concerning the '497 patent [D.E. 107].

SO ORDERED. This 12 day of December 2014.

JAMES C. DEVER III

Chief United States District Judge